

INDIANA BOARD OF TAX REVIEW

Final Determination Findings and Conclusions Lake County

Petition #: 45-001-02-1-5-00810
Petitioners: J. Edward & Monica A. Johnston
Respondent: Department of Local Government Finance
Parcel #: 001-25-43-0409-0008
Assessment Year: 2002

The Indiana Board of Tax Review (the "Board") issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The informal hearing as described in Ind. Code § 6-1.1-4-33 was held on January 15, 2004 in Lake County, Indiana. The Department of Local Government Finance (DLGF) determined that the Petitioner's property tax assessment for the subject property was \$32,800. The DLGF's Notice of Final Assessment was sent to the petitioners on April 1, 2004.
2. The Petitioners filed a Form 139L on April 30, 2004.
3. The Board issued a notice of hearing to the parties dated September 9, 2004.
4. A hearing was held on October 12, 2004, in Crown Point, Indiana before Special Master Barbara Wiggins.

Facts

5. The subject property is located at: 3243 Maryland Street, Gary, Calumet Township, Lake County.
6. The subject property is a vacant single-family residence currently undergoing rehabilitation.
7. The Special Master did not conduct an on-site visit of the property.

8. Assessed Values of subject property as determined by the DLGF are:

Land \$8,500 Improvements \$24,300 Total \$32,800

Assessed Values requested by Petitioners per the Form 139L are:

Land \$2,500 Improvements \$18,000 Total \$20,500

9. The persons indicated on the sign-in sheet (Board Exhibit C) were present at the hearing.

10. Persons sworn in at hearing:

For Petitioner: Monica A. Johnston, Petitioner

For Respondent: David Depp, Cole-Layer-Trumble (CLT), representing the DLGF

11. On February 25, 2005, Ken Daly, program director for the Board, sent a letter to the Petitioners (“Daly Letter”) requesting copies of any documents showing that they were responsible for the 2002 property taxes for the subject property. The Daly Letter made a similar request concerning parcel no. 001-25-43-0409-0011, which is the subject of a separate appeal. In response, the Petitioners provided a two-page document identified as a property tax receipt for the subject property for “provisional 2002 taxes payable in 2003” (“Receipt”). By letter dated April 29, 2005 (“Pardo Letter”), David Pardo, senior administrative law judge for the Board, served upon the Respondent a copy of the Daly Letter together with a copy of the Receipt. The Respondent was given the opportunity to file a response through and including May 16, 2005. The Respondent did not file a response.

Issues

12. Summary of Petitioner’s contentions in support of an alleged error in the assessment:
- a) The Petitioners bought the subject property on May 8, 2003, for \$12,500. *Johnston testimony; Petitioner’s Exhibits 1-2.* The Petitioners felt that they should buy the property as a tribute to the original owner, who had built the house for his retirement. *Johnston testimony; Board Exhibit A.*
 - b) The subject property is boggy river bottomland, and it is located on an unlit and unpaved street. *Johnson testimony.* Vehicles that stray from the street sink into the land and become mired. *Id.* The property is in danger of flooding. *Johnston testimony.* The property is swarmed by mosquitoes. *Id.*
 - c) The house was in terrible condition when the Petitioners purchased it. *Johnson testimony.* Eighty-eight (88) of ninety (90) pieces of roofing sheeting were rotted as were parts of two rafters, which eventually collapsed. *Id.* Only the toilets were

hooked-up to the septic system. *Id.* The water from sinks and other plumbing fixtures ran freely under the house. *Id.* The smell of dog urine permeated the hardwood floors. *Id.* The furnace was rusted and needed to be replaced, as did numerous fixtures. *Id.* The Petitioners also had to replace seven or eight window frames and a significant amount of insulation. *Id.* The Petitioners ultimately spent approximately \$28,000 on repairs. *Id.*; *Petitioner Exhibit 3.*

13. Summary of Respondent's contentions in support of the assessment:
- a) The Respondent testified that its field appraisers were not allowed by the State to enter homes and thus were not made aware of the condition of the subject dwelling. *Depp testimony.*
 - b) After listening to Monica Johnston's testimony regarding the interior of the subject property, the Respondent testified that the property was valued too high and should be adjusted down for the 2003 tax year (payable in 2004) to somewhere around \$21,000. *Depp testimony.*

Record

14. The official record for this matter is made up of the following:
- a) The Petition, together with Daly Letter, the Pardo Letter, and the Receipt.
 - b) The tape recording of the hearing labeled Lake Co. #230.
 - c) Exhibits:
 - Petitioner's Exhibit 1: Sales Disclosure Form
 - Petitioner's Exhibit 2: Settlement Statement
 - Petitioner's Exhibit 3: Repair & Supply Expense Log

 - Respondent's Exhibit 1: Form 139L Petition
 - Respondent's Exhibit 2: Subject property record card (PRC)
 - Respondent's Exhibit 3: Photograph of subject
 - Respondent's Exhibit 4: Top 20 Comparable Sales, PRCs and photographs
 - Respondent's Exhibit 4: Neighboring PRC

 - Board Exhibit A: Form 139 L
 - Board Exhibit B: Notice of Hearing
 - Board Exhibit C: Sign in Sheet
 - d) These Findings and Conclusions.

Analysis

15. At the hearing, the Respondent objected to the Petitioners' standing to bring the instant petition, because Monica Johnston testified that the Petitioners had purchased the subject property on May 8, 2003, and that the Petitioners did not pay the 2002 taxes on the property. *Johnston testimony*. The Petitioners subsequently provided evidence, which the Respondent did not rebut, demonstrating that they were billed for and paid taxes assessed for 2002. *See Receipt*. The Board therefore finds that the Petitioners have standing to pursue this appeal.
16. The most applicable governing cases/laws/regulations are:
 - a) A petitioner seeking review of a determination of the DLGF has the burden to establish a prima facie case proving that the current assessment is incorrect, and specifically what the correct assessment would be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d at 475, 478 (Ind. Tax Ct. 2003); *see also, Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998).
 - b) In making its case, the taxpayer must explain how each piece of evidence is relevant to the requested assessment. *See Indianapolis Racquet Club, Inc. v. Washington Twp. Assessor*, 802 N.E.2d at 1028, 1022 (Ind. Tax Ct. 2004) "[I]t is the taxpayer's duty to walk the Indiana Board . . . through every element of the analysis").
 - c) Once the Petitioner establishes a prima facie case, the burden shifts to the assessing official to rebut the Petitioner's evidence. *See American United Life Ins. Co. v. Maley*, 803 N.E.2d 276 (Ind. Tax Ct. 2004). The assessing official must offer evidence that impeaches or rebuts the Petitioner's evidence. *Id.*; *Meridian Towers*, 805 N.E.2d at 479.
17. The preponderance of the evidence supports a change in the assessment of the subject property. This conclusion was arrived at because:
 - a) The Petitioners submitted evidence that the subject dwelling was in a substantial state of disrepair when they purchased the property, and that they expended approximately \$28,000 on repairs. *Id.*; *Petitioner Exhibit 3*. The Petitioners did not present any evidence to quantify the effect of the condition of the subject property on its market value-in-use. Nonetheless, David Depp, the Respondent's representative, conceded that the property's value was in the neighborhood of \$21,000, given its condition. *Depp testimony*. While Depp limited his estimate of value to the 2003 assessment year, there is no indication that such limitation was based upon any deterioration of the property between March 1, 2002 and March 1, 2003. Instead, it appears that Depp's reference to 2003 merely conformed to his belief that the Petitioners were not responsible for the 2002 taxes.

- b) Based upon the Petitioners' evidence of the condition of the subject dwelling and the Respondent's concession that the value of the subject property was in the neighborhood of \$21,000, the Board finds that that the preponderance of the evidence supports a reduction of the assessment to \$21,000.
- c) The Petitioners sought a reduction in assessment beyond that to which the Respondent conceded. In support of their request for an even large reduction, the Petitioners presented sales disclosure and settlement statements showing that they purchased the subject property on May 8, 2003, for \$12,500. *Johnston testimony; Petitioner's Exhibits 1-2.*
- d) The Petitioners' evidence regarding their 2003 purchase of the subject property lacks probative value. The 2002 Real Property Assessment Manual (hereinafter "Manual") provides that for the 2002 general reassessment, a property's assessment must reflect its value as of January 1, 1999. 2002 REAL PROPERTY ASSESSMENT MANUAL 4 (incorporated by reference at 50 IAC 2.3-1-2). Consequently, a party relying on the sale of property occurring on a date substantially removed from January 1, 1999, must provide some explanation as to how the sale price demonstrates or is relevant to the property's value as of January 1, 1999. *See Long v. Wayne Township Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005) (holding that an appraisal indicating the value for a property on December 10, 2003, lacked probative value in an appeal from the 2002 assessment of that property). The Petitioners did not provide any evidence relating the 2003 sale price of the subject property to its market value as of January 1, 1999.
- e) Even if the Petitioners had presented evidence to adjust the sale price to the relevant valuation date, there is an additional issue that detracts from the probative value of that evidence. Monica Johnston testified that the Petitioners bought the property as a type of tribute to the original owner. This casts doubt upon the motivation of the parties to the sale. In order to provide evidence of market value, a sale must occur under conditions in which buyer and seller are typically motivated and act in what they consider to be their best interests. MANUAL, at 10.
- f) Finally, the Petitioners presented evidence that the subject land is prone to flooding, that it only has access to an unpaved street and that it is located in a bottomland plagued by mosquitoes. The Petitioners, however, did not present any evidence to quantify the effect of those factors on the market value of the subject property.
- g) Based on the foregoing, the Petitioners did not establish a prima facie case for a reduction in assessment below the \$21,000 value conceded by the Respondent.

Conclusion

18. The preponderance of the evidence supports a reduction in the assessment of the subject property to \$21,000. The Petitioners did not present a prima facie case for any reduction beyond that amount.

Final Determination

In accordance with the above findings and conclusions the Indiana Board of Tax Review now determines that the assessment should be changed.

ISSUED: _____

Commissioner,
Indiana Board of Tax Review

IMPORTANT NOTICE APPEAL RIGHTS

You may petition for judicial review of this final determination pursuant to the provisions of Indiana Code § 6-1.1-15-5. The action shall be taken to the Indiana Tax Court under Indiana Code § 4-21.5-5. To initiate a proceeding for judicial review you must take the action required within forty-five (45) days of the date of this notice. **You must name in the petition and in the petition's caption the persons who were parties to any proceeding that led to the agency action under Indiana Tax Court Rule 4(B)(2), Indiana Trial Rule 10(A), and Indiana Code §§ 4-21.5-5-7(b)(4), 6-1.1-15-5(b).** The Tax Court Rules provide a sample petition for judicial review. The Indiana Tax Court Rules are available on the Internet at <http://www.in.gov/judiciary/rules/tax/index.html>. The Indiana Trial Rules are available on the Internet at http://www.in.gov/judiciary/rules/trial_proc/index.html. The Indiana Code is available on the Internet at <http://www.in.gov/legislative/ic/code>.